APPENDIX A

Pertinent portions of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947, Act of July 3, 1935, 49 Stat. 449, as amended by the Act of June 23, 1947, 29 U.S.C. 141, 151 *et seq.* provide:

Section 1 of the 1947 Act, 29 U.S.C. 141:

Short Title and Declaration of Policy

Section 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Section 1 of the 1935 Act, as amended, 29 U.S.C. 151:

Findings and Policies

Section 1. The denial by some employers of the rights of employees to organize and the refusal by

some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The

elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 7, 29 U.S.C. 157:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, . . .

Section 8(d), 29 U.S.C. 158(d):

UNFAIR LABOR PRACTICES

Sec. 8. . . .

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of

a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Section 9(a), (b), (c), and (d), 29 U.S.C. 159(a), (b), (c), and (d):

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination,

unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified, in subsection (b) the extent to which the employees have organized shall not be controlling.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (e) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Section 10 of the Administrative Procedure Act, the act of June 11, 1946, 60 Stat. 243, 5 U.S.C. 1009:

JUDICIAL REVIEW

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion.

RIGHT OF REVIEW

(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

FORM AND VENUE OF ACTION

(b) The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

REVIEWABLE ACTS

(c) Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the

agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

INTERIM RELIEF

(d) Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

SCOPE OF REVIEW

(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,576

NATIONAL BISCUIT DIVISION (Biscuit Council, Bakery and Confectionery Workers' International Union of America) As bargaining agent and contractual representative of certain employees of the National Biscuit Company, *Appellant*

v.

BOYD LEEDOM, CHAIRMAN, ET AL., individually and as members of the National Labor Relations Board, *Appellees*

Appeal from the United States District Court for the District of Columbia

Decided January 29, 1959

Mr. Abraham J. Harris, with whom *Messrs. John V. Long* and *James H. Heller* were on the brief, for appellant.

Mr. Norton J. Come, Deputy Assistant General Counsel, National Labor Relations Board, with whom *Messrs. Jerome D. Fenton*, General Counsel, National Labor Relations Board, *Thomas J. McDermott*, Associate General Counsel, National Labor Relations Board, and *Marcel Mallet-Prevost*, Assistant General Counsel, National Labor Relations Board, were on the brief for appellees.

Messrs. Henry Kaiser, Isaac N. Groner and *Stephen I. Schlossberg* filed a brief on behalf of American Bakery and Confectionery Workers' International Union, AFL-CIO, as *amicus curiae*, urging affirmance.

Before REED, Associate Justice of the Supreme Court, retired,* BAZELON and FAHY, Circuit Judges.

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* Sitting by designation pursuant to the provisions of 28 U.S.C. § 294(a).

PER CURIAM: Appellant, a division of the Biscuit Council, Bakery and Confectionery Workers' International Union of America (hereinafter called BCW), is the bargaining representative for a group of locals in plants of the National Biscuit Company. It negotiated a series of master agreements with the Company, the last expiring on August 31, 1959. In December 1957, however, the BCW was expelled from the AFL-CIO for failure to eliminate certain corrupt practices. Thereafter various locals voted to disaffiliate and joined with the American Bakery and Confectionery Workers (hereinafter called ABC), a new international union chartered by the AFL-CIO. The new locals filed petitions with the National Labor Relations Board under § 9(c) of the National Labor Relations Act[1] for new and separate elections at each plant. Hearings were held in which appellant urged that the current master agreement barred the elections sought and that separate plant units were inappropriate for bargaining. The Board concluded, however, that the schism within and disaffiliation from appellant had so unstabilized the existing bargaining relationship as to warrant the elections sought. The Board, on June 30, 1958, therefore ordered elections in five of the plants.

On July 10, 1958, appellant brought this suit in the District Court against appellees, the Chairman and Members of the National Labor Relations Board, to declare the Board's action unlawful and for injunctive relief. Appellees immediately moved to dismiss on the ground, in substance, that the court was without jurisdiction because Board action in § 9 proceedings is reviewable only in the Court of Appeals and only when such action is the basis for a "final order" in an unfair labor practice proceeding under § 10 of the Act.

The sum of appellees' argument was that the challenged action fell within "the wide area of determinations which

[1] 49 STAT. 453 (1935), as amended, 29 U.S.C. § 159(c) (1952).

depend on the Board's expertise and discretion"[2] and was therefore controlled by our decision in *DePratter* v. *Farmer*.[3] Appellant, on the other hand, urged that the Board went beyond the area of its expertise and discretion and produced the sort of "unlawful action . . . and resulting injury[,] . . . by way of departure from statutory requirements or from those of due process . . ." for which we granted relief in *Leedom* v. *Kyne*, 101 U.S. App. D.C. 398, 249 F. 2d 490 (1957), *affirmed*, —— U.S. —— (Dec. 15, 1958).[4] The Board, said appellant, favored the AFL-CIO as against appellant's independent union in violation of the express command of § 9(c)(2) of the Act which provides:

> In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought. . . .

The District Court held that the Board's determination that the elections were warranted in the interest of stable bargaining relationships was within allowable limits of the Board's discretion and was not prohibited by § 9(c)(2). Accordingly, it dismissed the suit on July 17, 1958. This appeal was brought the same day and a request was made for a stay of the elections pending appeal. We denied the request.

Upon consideration of the appeal, we conclude that the District Court was clearly right.

Affirmed.

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[2] *Leedom* v. *Kyne*, 101 U.S. App. D.C. 398, 399, 249 F. 2d 490, 491 (1957), *affirmed*, —— U.S. —— (Dec. 15, 1958).

[3] 98 U.S. App. D.C. 74, 232 F. 2d 74 (1956).

[4] *Inland Empire District Council* v. *Millis*, 325 U.S. 697, 700 (1945).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,576

September Term, 1958
C.A. 1813-58

NATIONAL BISCUIT DIVISION (Biscuit Council, Bakery and Confectionery Workers' International Union of America) As bargaining agent and contractual representative of certain employees of the National Biscuit Company, *Appellant*

v.

BOYD LEEDOM, CHAIRMAN, ET AL., individually and as members of the National Labor Relations Board, *Appellees*

Filed Jan. 29, 1959

Appeal from the United States District Court for the District of Columbia

Before: REED, Associate Justice of the Supreme Court, retired, and BAZELON and FAHY, Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the order of the District Court appealed from in this cause be, and it is hereby affirmed.

Per Curiam.

Dated: January 29, 1959.

LE COPY

No. 869

In the Supreme Court of the United States

OCTOBER TERM, 1958

NATIONAL BISCUIT DIVISION (BISCUIT COUNCIL, BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA), PETITIONER

v.

BOYD LEEDOM, ET AL., AS CHAIRMAN, AND AS MEMBERS OF AND CONSTITUTING THE NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 869

NATIONAL BISCUIT DIVISION (BISCUIT COUNCIL, BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA), PETITIONER

v.

BOYD LEEDOM, ET AL., AS CHAIRMAN, AND AS MEMBERS OF AND CONSTITUTING THE NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The order of the District Court dismissing the complaint, and the reasons in support thereof, are set forth at R. 232, 228–230.[1] The opinion of the court below, affirming the District Court, is not yet officially reported, but is set forth at pp. 10a–12a of the petition.

[1] References are to the portion of the record printed as a Joint Appendix to the briefs in the court below.

JURISDICTION

The judgment of the court below was entered on January 29, 1959 (Pet. 13a). The petition for a writ of certiorari was filed on April 27, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether it is within the allowable limits of the Board's discretion under Section 9 of the National Labor Relations Act to determine that, where there has been a basic intra-union conflict involving an international union or a federation of unions which results in a realignment at that level followed by related action at the local level, an established bargaining relationship is disrupted to such an extent that the employees should be afforded a new opportunity to express their wishes concerning a bargaining representative in a secret-ballot election, even though the current collective bargaining contract has not yet expired.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth at pp. 5a–7a of the petition.

STATEMENT

Petitioner Biscuit Division, a labor organization affiliated with the Bakery and Confectionery Workers' International Union of America (hereafter called "BCW"), is the bargaining agency for a group of local unions likewise affiliated with the BCW which represented the employees at 17 biscuit and cracker plants of the National Biscuit Company (hereafter

called "Nabisco"). For several years, the petitioner and the Company had entered into a single master agreement covering all of these plants. The latest such agreement became effective on September 1, 1957, and by its terms was to expire on August 31, 1959. (R. 3–4, 5–7.)

In December, 1957, because of its failure to eliminate certain corrupt influences, BCW was expelled from the AFL–CIO as one of its affiliates, and the AFL–CIO chartered a new international, the American Bakery and Confectionery Workers (hereafter called "ABC"), to exercise jurisdiction in the field previously covered by BCW. As a result of these events, the various locals of BCW, including those concerned in this suit, held meetings in which the membership voted overwhelmingly to disaffiliate from the BCW and to affiliate with the ABC. Subsequently each local applied for and received a charter from ABC. (R. 7–8, 18, 20–21, 23, 25–26.)

The locals which were chartered by ABC, and which had jurisdiction over the respective plants of Nabisco, filed petitions with the Board, pursuant to Section 9(c) of the Act, seeking separate elections for the purpose of enabling the employees at each plant to redetermine their bargaining representative. The Board held hearings on the petitions, and permitted Biscuit Division to intervene in the proceeding. Biscuit Division asserted its outstanding contract with Nabisco as a bar to the proceedings, and contended further that the single plant units sought by the petitioners were inappropriate for bargaining purposes. On June 30, 1958, the Board issued d isions

in five of the cases, directing separate elections at each of five Nabisco plants, to determine whether the employees desired to be represented by the respective locals affiliated with the ABC, by Biscuit Division, or by neither. (R. 8–10, 17, 20, 22, 25.)[2]

Thereupon, Biscuit Division instituted this suit in the District Court, seeking a declaration that the five representation elections directed by the Board among the employees of Nabisco were unlawful, and asking an injunction against the holding of such elections. The gravamen of the complaint was that the Board acted unlawfully in concluding: (1) that the schism within the BCW occasioned by its expulsion from the AFL–CIO, coupled with disaffiliation at the local level, unstabilized the existing bargaining relationship to such an extent as to warrant the holding of representation elections despite the existence of a contract between Biscuit Division and Nabisco; (2) that separate elections should be held for each of the Company's plants. The complaint further alleged that, in so concluding, the Board applied special rules of decision to Biscuit Division, in violation of Section 9(c)(2) of the Act. (R. 10–15.) The Board moved to dismiss the complaint on the grounds that the District Court was without jurisdiction of the subject

[2] See also the Board's decision in *The Great Atlantic and Pacific Tea Company*, 120 NLRB No. 91 (set forth pp. 13–18, *infra*), the first representation proceeding to present the disaffiliation question involved here. The Board relied on this decision in the instant case (see R. 26, n. 2). The Board's action in *A & P* was sustained by the District Court for the Eastern District of Pennsylvania in *Local Union No. 492* v. *Schauffler*, 162 F. Supp. 121.

matter and that the complaint failed to state a claim warranting judicial relief (R. 66–67).

On July 17, 1958, the District Court granted the Board's motion to dismiss the complaint (R. 232). The Court held that the Board's determination that the elections were warranted in the interest of stable bargaining relationships was within the allowable limits of the Board's discretion and was not prohibited by Section 9(c)(2). Accordingly, the Court concluded that there was no such departure from statutory requirements as would confer jurisdiction under the rule of *Leedom* v. *Kyne*, 249 F. 2d 490 (C.A.D.C.), subsequently affirmed in 358 U.S. 184. (R. 228–230.)

On appeal, the court below held that the District Court was "clearly right" and affirmed its order dismissing the complaint (Pet. 10a–12a).

ARGUMENT

The conclusion of both the court below and the District Court—that the petitioner's allegations, that the Board departed from legal requirements in directing the five representation elections complained of, were insubstantial and thus not sufficient to bring this case within *Leedom* v. *Kyne*, 358 U.S. 184[3]—is manifestly correct. Moreover, no conflict of decisions is shown. The instant case accordingly does not warrant review by this Court.

[3] That case permits an exception to the general rule that Board representation determinations are not reviewable in a federal district court in the limited situation where it is plain that the Board has exceeded statutory or constitutional requirements and no other adequate remedy exists for the redress of this wrong.

1. Section 9 of the Act vests the Board with broad discretion to determine the unit appropriate for collective bargaining purposes, and the circumstances under which an outstanding collective bargaining contract will or will not bar a representation election.[4] In formulating its policy as to when an existing contract bars an election, the Board's objective has been to accommodate the twin statutory policies of affording employees full freedom to select a bargaining representative, and of encouraging collective bargaining (see Section 1 of the Act). Thus, the Board has concluded that ordinarily it will not entertain a representation petition in the face of an outstanding collective bargaining contract.

However, the Board has held that an outstanding contract will not bar an election where there has been a basic intra-union conflict involving an international union or a federation of unions, resulting in a realignment at that level followed by related action at the local level. In these circumstances, the established bargaining relationship is clearly disrupted and confusion is created as to which faction is the employees' representative; hence the existing contract can no longer be said to stabilize industrial relations between the employer and his employees. It is therefore an

[4] *National Labor Relations Board* v. *Grace Co.*, 184 F. 2d 126, 128 (C.A. 8); *Kearney & Trecker Corp.* v. *National Labor Relations Board*, 210 F. 2d 852, 857 (C.A. 7); *National Labor Relations Board* v. *Efco Manufacturing, Inc.*, 203 F. 2d 458, 459 (C.A. 1); *National Labor Relations Board* v. *Libby-Owens-Ford Glass Co.*, 241 F. 2d 831, 836 (C.A. 4). See also, *Fay* v. *Douds*, 172 F. 2d 720, 724 (C.A. 2); *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 16–18 (C.A. 2).

appropriate occasion to afford the employees a new opportunity to express their wishes concerning a bargaining representative in a secret-ballot election. *A. C. Lawrence Leather Company*, 108 NLRB 546; *Wade Manufacturing Co.*, 100 NLRB 1135; *Hershey Chocolate Corp.*, 121 NLRB No. 124.[5]

The Board found that such a schism was presented here and for that reason concluded that the petitioner's outstanding contract with Nabisco would not bar elections at this time (see R. 18, n. 3; 25–26, n. 2). In the light of the facts before the Board concerning the split within the BCW International over corruption, the chartering of the new ABC, and the ensuing disaffiliation action at the local levels, the Board's finding of a schism was fully warranted. Thus, as appears from the Board's decision in *The Great Atlantic and Pacific Tea Company*, 120 NLRB No. 91 (pp. 13–18, *infra*), which was incorporated by reference in one of its decisions herein (R. 25–26, n. 2), charges of corruption were preferred against certain officials of the BCW in March 1957, and as a result a "reform" group led by five International officers, was organized; in December 1957, after the BCW refused to remove the officials in question, the AFL–CIO convention voted to expel it on grounds of corruption; the AFL–CIO then issued a charter for a new International, ABC, to the former BCW "reform" group. See also, *Hershey Chocolate Corp.*, 121 NLRB No. 124. The split at the International level

[5] Copies of this decision are included in the record lodged with the Court.